NO. 87-1344

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1988

EDWIN MEESE, III, Attorney General
of the United States, et al.,
Petitioners,

-vs-

JACK ABBOTT, et al.,
Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

BRIEF OF THE AMICI CURIAE THE STATES OF FLORIDA AND IDAHO

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INTEREST OF AMICI CURIAE

The State of Florida operates a prison system holding 32,700 inmates in 101 separate facilities.[1/] The rules of the

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[1/] Florida Department of Corrections
(Cont. on next page)

Florida Department of Corrections permit inmates to receive publications and officials to exclude certain publications.[2/] We have no figures available on how many publications are admitted into Florida prisons.

The State of Idaho also operates a prison system. The Idaho Department of Corrections has policies and procedures governing the receipt of publications by inmates that are similar to the United States Bureau of Prisons' (BOP) regulations. Petition for writ of certiorari filed by the Solicitor General, p. 3-4, 6, n. 205, in Meese v. Abbott, no. 87-1344, cert granted, ____ U.S. _____ (April 22, 1988).

Annual Report 1986-1987, p.7.

2/ Rule 33-3.012, Fla.Admin.Code.

Officials of the Florida and Idaho Departments of Corrections occasionally encounter publications that are objectionable for a variety of reasons. They may be obscene; they may contain plans for escape or be written in code. They may be racist and inflammatory to a degree that is reasonably likely to provoke violence or disruption. When inmates or publishers attempt to admit publications which are potentially harmful to the objectives of our prison system -- maintaining order and security, promoting rehabilitation -- into prisons, decisions sometimes are made to exclude all or part of a publication.

The standards which govern decisions to ban a publication will substantially affect the types of material that can be kept out of our prisons.

If this Court permits application of a "strict scrutiny" standard in such

instances, it will significantly limit the ability of corrections officials in Florida to confront and neutralize potential threats to security, order and rehabilitation. Only the reasonableness test previously adopted by this Court in matters affecting inmate rights -- the sole rights materially at stake in this case -- will provide prison officials with enough discretion to protect substantial and legitimate governmental interests in security, order and rehabilitation.

Because Idaho's and Florida's policies and procedures are similar to the BOP's, this Court's decision will directly affect them as well as those of other states that have similar publication rules for their prisons.

ARGUMENT

THE COURT OF APPEALS ERRED BY ADOPTING A CONSTITUTIONAL STRICT SCRUTINY STANDARD FOR CASES INVOLVING THE ENTRY OF PUBLICATIONS INTO PRISON. INSTEAD, THE COURT SHOULD HAVE ADOPTED THE RATIONAL BASIS TEST OF TURNER V. SAFLEY.

Like the United States, Florida and Idaho are concerned about the entry into their prisons of publications that could provoke violence or disturbances that threaten institutional security and order. We are especially concerned over our ability to prevent violence under the heightened, or strict, scrutiny standard imposed by Procunier v. Martinez, 416 U.S. 396, 94 S.Ct. 1800, 40 L.Ed.2d 224 (1974). We agree with the Solicitor General that the appropriate standard should be the deference-based rational basis test of Turner v. Safley, ___ U.S. ___, 107 S.Ct. 2254 (1987), and O'Lone

v. Estate of Shabazz, ___ U.S. ___, 107 S.Ct. 2400 (1987).

We have found some publications mailed to prison inmates to present security threats, as has the Federal Bureau of Prisons. The types of documents that have caused our prison officials the most concern recently are somewhat different from those at issue in this case. Here, the petitioner is concerned about sexually explicit publications, nonexplicit homosexual publications, and materials from the American Nazi Party that preached ethnic superiority (Petition for Writ of Certiorari, p.6, n.5.).

While our officials would be concerned about such publications, those that have captured our attention have been racist and inflammatory.

Idaho prison security has been threatened by white supremacist groups.

The majority of Idaho's prisoners are white. A small number of these prisoners, at the Idaho State Correctional Institution (ISCI), are members of the Church of Jesus Christ Christian/Aryan Nations (CJCC/AN), or other religions or groups who have white supremacist beliefs. McCabe v. Arave, 626 F.Supp 1199, 1201 (D. Idaho 1986), aff'd in part and modified in part, McCabe v. Arave, 827 F.2d 634 (9th Cir. 1987).

CJCC and its alter-ego, Aryan Nations, were founded by Richard Butler. Butler preaches and espouses racial hatred, revenge and violence. Inmates with the kind of white supremacist beliefs taught by Butler have caused several incidents of racial violence at ISCI during the 1980's. McCabe v. Arave, 626 F.Supp at 1204. CJCC's literature follows butler's teachings in that they preach race hatred and racial violence. CJCC was banned from

holding organized meetings at ISCI because of the potential of escalating prison tension, threatening and intimidating minority racial groups and compromising prison security. McCabe, 626 F.Supp at 1204.

One of the most pressing problems in the Florida prison system has been the prevalence and persistence of racial tension. That tension can, and has, led to violence for reasons that may seem trivial or even irrational to outsiders. For example, on May 5, 1988, a group of approximately 70-80 black inmates staged a minor uprising at Apalachee Correctional Institution in North Florida, beating white inmates on the prison compound. Investigation of the incident, which was quickly quelled, indicated that the disturbance was provoked by a rumor "that if you 'Blitz Crackers' (beat up on white

inmates) you could get transferred" to a more preferable prison in South Florida (Appendix A-10).

Another example of a racially-motivated incident occurred last summer on July 9, 1987. Here, by coincidence, another group of black inmates -- about 15 altogether -- attacked and beat eight white inmates in retaliation for the cutting of a black inmate by a white inmate earlier in the day (Appendix 2).3/

In order to prevent other such uprisings, riots or disturbances which could be far worse and which could result in deaths or serious injury to inmates and

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3/ These are only a few of the racially motivated incidents that have occurred in Florida prisons. They are offered as anecdotal examples of a wide-ranging problem. We are unable to present statistical evidence of the total number of racially motivated incidents in Florida prisons because we have not kept such data.

correctional officers, Florida and other state prison officials must have the means to keep racial tensions under control. Anything that tends to increase the level of racial tension logically must increase the risk of violence.

This point was an issue in a recent case involving the constitutionality of the Florida practice of barring admission to racist and inflammatory publications. See Lawson v. Wainwright, 641 F.Supp 312 (S.D. Fla. 1986), aff'd sub nom. Lawson v. Dugger, 840 F.2d 779 (11th Cir. 1988). In Lawson, the defendant-prison officials argued that racist and inflammatory literature heightened racial tensions in Florida prisons, increasing the risk of violence, and that therefore, the admission of this literature could be restricted under the reasonableness standard. The district court agreed that the concerns of

Florida prison officials were reasonable but held the exclusion of the literature to be constitutional, applying the strict scrutiny test of Procunier v. Martinez, supra; Lawson v. Wainwright, 641 F.Supp at 323. The circuit court affirmed, applying the same standard, and on rehearing rejected arguments that Turner v. Safley should apply, citing the present case. Lawson v. Dugger, 840 F.2d 779 (11th Cir. 1988).

The application of Martinez's strict scrutiny test to cases involving publications makes it far harder for prison officials to maintain order and internal security. As the Lawson decision indicates, the strict scrutiny standard as applied by the circuit courts can substantially limit the discretion of prison officials and injects the courts too deeply into questions of what constitutes a

threat to security -- questions the courts are ill-equipped to handle. This is especially true if speech is deemed to take place inside prison where a piece of writing is read and where it will have its greatest effect. See, e.g., Procunier v. Martinez, 416 U.S. at 408-409. The constitutional interests of publishers are not great enough to justify the more exacting standard in such circumstances. Rather, such cases should turn on the First Amendment rights of inmates.

Recently, this Court re-emphasized that the constitutional rights of prisoners could be limited by prison regulations reasonably related to legitimate governmental interests in the maintenance of security, order, discipline and rehabilitation. See Turner v. Safley, ____ U.S. ____, 107 S.Ct. 2254 (1987); O'Lone v. Estate of Shabazz, ____

U.S. ____, 107 S.Ct. 2400 (1987). These decisions capped a line of cases that stood for the principle that in matters affecting legitimate interests such as security, order and rehabilitation, the courts should defer to the judgments of prison officials. Block v. Rutherford, 468 U.S. 576 (1984); Bell v. Wolfish, 441 U.S. 520 (1979); Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. 119 (1977); Pell v. Procunier, 417 U.S. 817 (1974). The facts, holdings and principles enunciated in these latter cases differ widely from those in Martinez. However, the lower courts have tended to apply the Martinez test in cases involving inmates' constitutional rights in a way this Court apparently viewed as inappropriate. Thus, this Court felt compelled to make it plain that when inmates' rights were at stake, courts should apply the principles of

deference to the reasonable judgment of prison officials on matters affecting legitimate penological interests, and, when as here a state prison is involved, considerations of federalism should raise separation of powers to invoke judicial restraint. Turner, 107 S.Ct. at 2260-2261. Never, in the prisoners' rights cases since Martinez, has this court applied the strict scrutiny test.

Incarceration necessarily brings about the "'withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system.'" Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. at 125. "[A] prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system."

Pell v. Procunier, 417 U.S. at 822. Thus, in Pell this Court said challenges by prisoners to prison regulations must be analyzed "in terms of the legitimate policies and goals of the corrections system." Ibid. In Pell, 417 U.S. at 822-823, the courts identified four such concerns: deterrence, the isolation of the offender for the protection of society, rehabilitation, and the maintenance of internal security and order. See also Bell v. Wolfish, 441 U.S. at 546 (an essential objective in running a prison is "maintaining institutional security and preserving internal order and discipline"). Thus, this Court has required the lower courts to exercise deference in such cases because "[r]unning a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources,

all of which are peculiarly within the province of the Legislative and Executive Branches of Government." Turner, 107 S.Ct. at 2259. See also Bell v. Wolfish, 441 U.S. at 548 ("the administrator ordinarily will, as a matter of fact in a particular case, have a better grasp of his domain than the reviewing judge").[4/]

The Martinez test is more stringent than the rule in Turner, and requires prison regulations to be reasonably related to a legitimate penological interest and to "be no greater than is necessary or essential to the protection of the particular governmental interest

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4/ And see Procunier v. Martinez, 416 U.S. at 405. "[C]ourts are ill-equipped to deal with the increasingly urgent problems of prison administration and reform"; and Id. at note 9, "They are also ill suited to act as the front-line agencies for the consideration and resolution of the infinite variety of prisoner complaints".

involved." Martinez, 416 U.S. at 413-414. Thus, under Martinez, a court would invalidate a regulation or practice whose "sweep is unnecessarily broad." Id. 416 U.S. at 414.

In Martinez, the only case affecting prisoners' rights in which this Court adopted a strict scrutiny test, the Court focused on the fact that more than just the rights of inmates were at issue. Martinez involved a California prison regulation permitting the censorship of inmate correspondence. This Court identified a close personal interest in such personal correspondence by both the inmate and a sender/recipient outside prison.[5/]

5/ Inmate-to-inmate correspondence is not protected by the same strict scrutiny standard; instead it is subject to reasonable restrictions. Turner v. Safley, supra.

Deciding the case based not on the rights of inmates but the First Amendment rights of their outside correspondents, this Court said, "In the case of direct personal correspondence between inmates and those who have a particularized interest in communicating with them, mail censorship implicates more than the right of prisoners." Martinez, 416 U.S. at 408, emphasis added. The Court found that concerning such a "particular means of communication . . . the interests of both parties are inextricably meshed." Id., 416 U.S. at 409. It is clear that Martinez turned on this court's recognition of the intimate nature of personal correspondence. In discussing the issue, the Court used this pointed example:

> The wife of a prison inmate who is not permitted to read all that her husband wanted to say to her has suffered an abridgment of her interest in

> communicating with him as plain as that which results from censorship of her letter to him.

Id. 416 U.S. at 409.[6/]

Significantly, this Court saw a distinction between personal correspondence and written communications of other kinds: "Different considerations may come into play in the case of mass mailings." Id., 416 U.S. 409 n. 11. But since the issue was not raised in the case, the Court expressed no view on it.

6/ In Turner v. Safley, 107 S.Ct. at 2265 - 2266, the court also addressed the constitutionality of a prison rule restricting the rights of inmates to marry. The court invalidated the rule on the ground that it was not reasonably related to a legitimate penological interest. However, the court suggested that the test of Martinez might have applied. Id., 107 S.Ct. at 2266. Clearly, in a marriage, the rights of the partners are "inextricably meshed": ". . .inmate marriages, like others, are expressions of emotional support and public commitment." Id., 107 S.Ct. at 2265.

Different considerations certainly do come into play when one considers the entry into prison of books and other publications. The interest of a book or magazine publisher is far different from that of a letter writer. The letter writer has a direct personal interest in having his or her letter read.7/ On the other hand, a publisher's interest is more general. While a publisher has a First Amendment right to publish, he has no specific expectation that a particular individual will read what he has published. In fact, he has no more than a general hope that a publication will find an audience. Moreover, a prison regulation

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7/ "Communication by letter is not accomplished by the act of writing words on paper. Rather it is effected only when the letter is read by the addressee." Martinez, 416 U.S. at 408.

preventing a publication from circulating inside prison is only a minor restriction of the publisher's First Amendment rights. His work may still circulate to the public at large. The regulation at issue thus is not a "consequential restriction on the First and Fourteenth Amendment rights of" a nonprisoner publisher. Procunier v. Martinez, 416 U.S. at 409; Turner v. Safley, 107 S.Ct. at 2260. For the letter writer, however, exclusion of his or her letter from prison means that the person for whom it was intended never will read the message it contained. A publisher's insistence that he has a right to place a book inside a prison is little different from the notion that a television broadcasting company has a right to install television sets for inmates. However, we know of no rule that suggests that television broadcasters have

a First Amendment interest in requiring that their programs are viewed by inmates. The interests of a publisher and an inmate are not "inextricably meshed."

There is ample support in the Turner-O'Lone line to justify applying the reasonableness test rather than strict scrutiny. In that line of cases, this Court has not hesitated to apply a reasonableness test even when the First Amendment rights of non-inmates were affected by a prison rule. For example, in Block v. Rutherford, supra, this Court upheld a ban on contact visits between pre-trial detainees and non-inmates on the ground there was a "valid, rational connection" between the restriction and the maintenance of internal security. Block v. Rutherford, 468 U.S. at 586. In Bell v. Wolfish, supra, this Court upheld a jail regulation allowing inmates to receive

books only from publishers or book clubs, a rule that implicated the First Amendment rights of private correspondents who wanted to mail books or magazines to inmates. In Pell v. Procunier, this Court reversed a court of appeals decision striking down California prison regulations prohibiting face-to-face interviews between inmates and news reporters. This Court reasoned that:

> When . . . the question involves the entry of people into the prisons for face-to-face communication with inmates, it is obvious that institutional considerations, such as security and related administrative problems, as well as the accepted and legitimate policy objectives of the corrections system itself, require that some limitation be placed on such visitations.

Pell v. Procunier, 417 U.S. at 826.

Certainly in Pell, the First Amendment rights of the reporters were implicated. The Court permitted that restriction because the regulation was reasonably

related to a need to maintain security and because reporters had alternative means of access to inmates, even if those alternatives were "unimpressive if they were submitted as justification of personal communication among members of the general public." Id., 417 U.S. at 825.

And, in the recent case of O'Lone v. Estate of Shabazz, supra, First Amendment rights of non-inmates were affected by a New Jersey prison rule prohibiting inmates on certain work squads from attending a Muslim prayer service similar in importance to a Christian's Sunday service. We are informed by the Solicitor General that the religious services were performed by an outside Islamic minister. Petition for writ of certiorari filed by the Solicitor General, p. 15, in Meese v. Abbott, no. 87-1344, cert granted ____ U.S. ____ (April 22, 1988), citing O'Lone v. Estate of

Shabazz, petitioner's brief, p. 17. The religious leader's First Amendment rights certainly were implicated by the inability of his parishioners to attend services. Yet, in that case this Court upheld the regulation as reasonably related to legitimate governmental interests.

The common element among these cases and the present one is that while First Amendment rights of outsiders were affected, the interests of free citizens were not "inextricably meshed" with those of inmates. The same deeply personal interest as in personal correspondence simply was not there.

Where speech takes place is a factor to consider. In public forums, strict scrutiny applies to regulations restricting expression; in non-public forums, a regulation affecting expression does not violate the constitution if it is

reasonable in light of the purpose to be served and it is content neutral. Cornelius v. NAACP Legal Defense and Education Fund, Inc. 473 U.S. 788 (1985); Perry Education Assn v. Perry Local Educators' Assn, 460 U.S. 37 (1983). Prisons are not public forums. Jones v. North Carolina Prisoners' Labor Union, Inc., 433 U.S. at 134.[8/] Thus, the entry of publications should be subjected to the same reasonableness test in Turner and O'Lone.

8/ By analyzing the issue of bulk mailings in Jones in terms of whether prisons constituted public forums, this court explicitly gave further currency to the notion that written speech occurs where it is read -- here inside prison. Cf., Procunier v. Martinez, 416 U.S. at 408. As prison officials can reasonably regulate the physical entry of outsiders, Pell v. Procunier, supra, the court appeared to sanction the same sort of regulation of speech deemed to occur in prison.

Indeed, we view the place where speech is deemed to occur to be of particular importance. At its essence, speech is a form of conduct -- conduct based on the expression of ideas, but still conduct. Moreover, this Court has recognized that speech has the capacity to induce action, and that there are times when such action can be regulated. Chaplinsky v. New Hampshire, 315 U.S. 568, 62 S.Ct. 776, 86 L.Ed.2d 1031 (1942); Brandenberg v. Ohio, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969).

Any speech that takes place in prison will necessarily have its first effect there. In fact, this very concept lies at the heart of this Court's decision in Turner to apply the reasonableness standard to inmate-to-inmate correspondence. It is only consistent to apply the reasonableness standard to speech in publications that are

read in prison and likely to have an effect on behavior there, particularly in light of the tenuous First Amendment interest of publishers.

Finally, we suggest the possibility that the publications at issue are not entitled to First Amendment protection. This Court has recognized that some types of speech either are excluded from, or afforded limited, constitutional protection. The First Amendment does not protect:

1. obscene material, Miller v. California, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419 (1973); Roth v. United States, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957);

2. child pornography, New York v. Ferber, 458 U.S. 747, 102 S.Ct. 3348, 73 L.Ed.2d 1113 (1982);

3. fighting words, Chaplinsky v. New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed.2d 1031 (1942);

4. incitement to imminent lawless activity, Brandenberg v. Ohio, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969);

5. libel, defamation or fraud; see, e.g., Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985); Gertz v. Robert Welch, Inc., 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974); Beauharnais v. Illinois, 343 U.S. 250, 72 S.Ct. 725, 96 L.Ed 919 (1952); Schneider v. State, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed 155 (1939). See also Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 504 n.22, 104 S.Ct. 1949, 1961 n.22, 80 L.Ed.2d 502 (1984).

We have not seen the publications which are the subject of this petition. However,

from their descriptions, it is possible that some might be classified as obscene. The American Nazi Party literature could be defamatory if it degraded other ethnic, religious or racial groups. See, e.g., Beauharnais v. Illinois, supra. Such conclusions, of course, will depend on a reading of the publications.

If any of these publications are judged obscene or defamatory, the government should be able to ban them regardless of whether this Court decides to apply the Martinez test to the admission of publications generally.

However, a conclusion that the publications at issue fall into one of these classes does not remove the need for this Court to address the constitutional issue presented. Not all publications coming into the prisons of this country can be so neatly pigeon-holed. A prison

official might reasonably conclude that a publication that cannot be so labeled is a threat to legitimate penological objectives. A clear ruling from this Court on the standard of review is necessary for the orderly operation of state prison systems.

In any event, because the interest of publishers is not as great as that of letter writers, and because the publications at issue will have their effect inside prison, the Turner-O'Lone reasonableness test is more appropriate.

We respectfully join the petitioners and ask the Court to reverse the decision of the circuit court.

CONCLUSION

This Court should reverse the decision of the circuit court.

Respectfully submitted:

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APPENDIX 1

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

DATE: May 17, 1988

TO: Jerry Vaughan,
Acting Inspector General

FROM: Garland Keeman

RE: INMATE DISTURBANCE, ACI EAST UNIT

On 5/5/88 at approximately 12:20 p.m. a serious disturbance occurred at ACI East Unit Compound involving a large group of inmates who were mostly black. There were some injuries to approximately 8 white inmates, none serious however. The following chronology of events that occurred was developed from information furnished by various staff members who were eye witnesses to the incident.

At approximately 12:10 P M. two inmates, (Verro Chambers #562029 and Percell Wise #246839) became involved in an altercation in the smoking area of G&H dormitory. The two were separated by other

inmates. Chambers and Wise were then escorted to the shift supervisor's office.

At approximately 12:13 P.M. a large group of black inmates began assaulting four to five white inmates on the west field adjacent to the internal gatehouse. Following this attack, approximately seventy to eighty black inmates banded together and began running and shouting toward G&H dormitory.

At approximately 12:15 P.M. a large group of black inmates began assaulting two or three white inmates on the east field adjacent the gatehouse. This same group of black inmates then began running and shouting toward A&B and C&D dormitories.

At approximately 12:20 P.M., Shift Supervisor Alford Ellis was notified of the disturbance by gatehouse officer Dianne Joyner, who also related that assistance was needed in H-dormitory. Lt. Ellis and

Sgt. Robert Jackson left the lieutenants (sic) office and headed to H-dormitory. The two met officer Curly Pittman as they entered the west side of the compound, who was escorting inmate Verro Chambers #562029. Pittman stated that everything was under control and added that officer Shellie Foxworth had responded to assist him in removing inmates Chambers and Wise from the scene. Lt. Ellis and Sgt. Jackson escorted inmate Chambers to the gatehouse. Sgt. Jackson proceeded back to the lieutenant's office, and Lt. Ellis escorted the inmate to medical so he could be interviewed and examined.

While Lt. Ellis was interviewing inmate Chambers, Sgt. Jackson arrived in medical with three white inmates who stated that they had been assaulted by black inmates who were going around assaulting white inmates at random.

Lt. Ellis then received a call that approximately (100) one hundred black inmates on the west side of the compound were running down the walk toward E&F and G&H dormitories. As Lt. Ellis entered the compound, he observed approximately 60 to 70 black inmates on the walk in front of E&F and G&H dormitories. Also there were approximately (10) white inmates who had armed themselves and were in front of the kitchen on the west side. Lt. Ellis also observed 40 to 50 inmates running out of G&H dormitory where it was reported that some white inmates had been assaulted. Also, during this time period, the gatehouse officer had reported that a white inmate had been assaulted on the east side, and approximately four white inmates were at the gatehouse seeking safety.

Correctional Officer James Mason, realizing the seriousness of the situation,

locked down E&F dormitory prior to the arrival of the group of black inmates, thus preventing them from entering.

Lt. Ellis immediately requested the assistance of additional staff. Within minutes, approximately (22) uniformed and non-uniformed officers reported. These were primarily staff assigned to work squads, confinement, warehouse and laundry.

At the same time Lt. Ellis ordered the gatehouse officer to sound the whistle three times, indicating for all inmates to return to their bunks in their respective dormitories.

At approximately 12:25 P.M. all inmates were secured in the dormitories. This inspector who was at the institution was advised. Also, the process of identification of participants began, by removing these inmates from the dormitories and placing them in Administrative Confinement.

Between approximately 12:30 and 12:35 P.M., fifteen (15) West Unit staff members arrived along with Superintendent Bill Sprouse, Regional Director Phil Shuford, Assistant Superintendents Harold Bailey and Paul Coburn, Colonel Bill Davis, Major Faircloth of Holmes CI, Prison Inspectors, Michael Cravener, Glenn Sellers, and Robert Simosen along with ten (10) RJCI and (4) CMHI security staff. Shortly thereafter, numerous medical personnel arrived and reported to the institutional medical clinic.

It is reported that only eight white inmates received medical attention for injuries consisting of abrasions and bruises.

During the process of confining identified participants, (44) inmates in disciplinary confinement and in close custody status were moved from East Unit confinement.

Nine (9) to ACI West Unit, seven (7) to OCI and twenty-eight (28) to RJCI. For approximately 3 to 4 hours on 5/5/88, the process of identification resulted in 118 inmates being placed in administrative confinement.

During the process of confining those inmates who participated, an orderly process of removing and inventorying personal property began. Normal operations of the institution were terminated, with instructions for all inmates to remain on their beds during the process of identifying inmates and removing personal property.

Additional staff were assigned to all dormitories. The serving of the evening meal proceeded at approximately 5:00 P.M., with one dormitory at a time served. At approximately 7:00 P.M., inmates were allowed to shower and participate in normal activities, with one dormitory at a time

involved. According to Colonel Bill Davis, operations were basically back to normal except with additional staff assigned.

During the morning of 5/6/88 normal institutional operations were placed into effect without incident.

At approximately 5 P.M. on 5/6/88 the process of transferring (94) of the confined inmates began, monitored by Inspectors Garland Keeman and Gary McClain. Fifty were transferred to UCI, twenty to Sumter CI and ten to Cross City CI and fourteen to Baker CI. The transfer process was completed at approximately 8:30 p.m.

CONCLUSION

Based on interviews with various staff and inmates, it is believed that several of the black participants wanted to obtain a transfer to the South Florida area because

many of their so-called "Home Boys" had recently been transferred to that location. The word was out that if you "Blitz Crackers" (beat up on white inmates) you could get transferred.

Of the 118 inmates confined following the disturbance, 50% were from Hillsborough, Broward and Dade counties.

Additionally, it is determined that the decision by Lt. Alford Ellis to have the gate house officer (Dianne Joyner) sound the whistle three times (indicating all inmates to return to their respective dormitories for emergency security count) and the inmates responding, prevented further serious injury and or property damage.

Also Lt. Ellis' request for additional staff assistance was met with immediate response.

The sounding of the whistle and the presence of responding personnel are be-

lieved to be the main factors in preventing a more serious situation.

NOTE: LOCATED IN THE OFFICE OF THIS INSPECTOR

1. Copies of Incident Reports
2. Names of Inmate Participants Transferred on 5/6/88
3. Names of Victims that Received Injuries.

/s/ Garland Keeman

Correctional Officer Inspector II

APPENDIX 2

SPECIAL INVESTIGATION
BREVARD CORRECTIONAL INSTITUTION
Sharpes, FL

INVESTIGATOR: Robert B. Powers

DATE OF INCIDENT: July 9, 1987

TYPE OF INCIDENT: Random Assaults Necessitating Recall

LOCATION OF INCIDENT: Brevard Correctional Institution

VICTIM(S): See Exhibit #1

SUSPECTS: See Exhibit #2

SYNOPSIS: On July 9, 1987, at approximately 7:25 p.m., a group of Black inmates began randomly assaulting White inmates. Recall was announced several times and all inmates returned to their dormitories. These assaults were an apparent retaliation for an assault which occurred on the morning of July 9, 1987 when a White inmate cut a Black inmate on the neck.

NARRATIVE:

On July 9, 1987, at approximately 7:25 p.m., a group of Black inmates began random assaults upon White inmates. Several officers observed these assaults and Recall was announced numerous times over the

compound public address system. These assaults began in the Housing I area and the group of inmates then moved to the recreation field continuing their assaults. These random assaults continued as the inmates were returning to their dormitories. It took approximately fifteen (15) minutes to secure all inmates back into their dormitories. One assault occurred within J Dormitory during the process of Recall. Investigation revealed no other assaults within the dormitories.

Once the inmates were secured in their dormitories, information was gathered by both staff and inmates identifying the inmates involved in these assaults. All known participants were then removed from the dormitories and placed into Administrative Confinement pending investigation of this incident. These inmates were removed

from the dormitories without incident or use of force.

Due to the large number of statements gathered as a result of this incident they will not be listed separately within the investigation.

Investigation reveals that these assaults occurred as a result of an incident which took place on July 9, 1987, at approximately 7:25 a.m. During this incident inmate Hayward, Tide #A095231 (B/M) and inmate Robb, George #089856 (W/M) were involved in an altercation where Robb cut Hayward on the neck with a razor blade. Investigation reveals that Hayward was attempting to obtain money from Robb and when Robb refused, Hayward grabbed his sunglasses. These inmates began fighting and during the course of the fight Robb cut Hayward with a razor blade. This incident is the subject of a separate investigation.

As a result of the above incident Black inmates began talking of retaliation. The instigators and main assailants have been identified as inmates Williams, Charles #096626; Banks, Tony #102090; and Reid, Derek #101856.

Eight inmates have been identified as victims of these assaults. Their names and the extent of their injuries will be listed in Exhibit #1. One of the victims, Hornsby, Malcolm #903891, required treatment at an outside hospital. The remainder of the victims requiring treatment were taken care of in the institutional clinic. Investigation reveals that there were other possible victims but they were not identified nor did they report to the clinic for treatment of any injuries.

Although several inmates reported fighting back against these assaults, no inmates identified as being the assailants in this incident reported any injuries.

Nineteen (19) inmates were transferred to various institutions the following day (7-10-87) as a result of this incident. Fifteen (15) of these inmates have been identified as participating in this incident. Inmate Hayward, Tide #A095231 was included in this transfer as the incident involving him proved to be the catalyst of the incident. Inmates Edwards, Michael #497324; Gibson, Samuel #A093734; and Thompson, Ernest #102568 were in Confinement during the incident but were identified as hollering from Confinement the following morning (7-10-87) in an attempt to incite other inmates on the compound to continue the incident. Inmate Robb, George has also been transferred to a separate facility.

As can be seen by the list of suspects (Exhibit #2) they are all young offenders serving sentences for violent crimes. Two

of the inmates are serving part of their sentences for inciting a riot in a State institution. As of this writing (7-17-87) the compound has been functioning without any further incidents and the institution has returned to normal operation.

Due to the seriousness of the assault on inmate Hornsby it is the subject of a separate investigation. Preliminary investigation reveals that this assault was committed by inmate Banks, Tony #102690.

Disciplinary reports have been prepared by the Security Department against all known assailants involved in this incident.

EXHIBITS

1. Affidavit of Lt. Roy Grose
2. Affidavit of Sgt. Walter Stoker
3.
4. [Material missing from copy available
5. to counsel]
6.
7. Affidavit of Sgt. Duane Smith
8. Memorandum of Lt. Larry Cruce
9. Affidavit of Groover, Ernest #103863 (B/M)
10. Affidavit of Jones, Donald #105340 (W/M)
11. Affidavit of Smith, Enoch #486829 (B/M)
12. Affidavit of Hornsby, Malcolm #903891 (W/M)
13. Affidavit of Garlinghouse, Edward #105565 (W/M)
14. Affidavit of Robinson, David #104126 (B/M)
15. Affidavit of Coffey, Joseph #094749 (W/M)
16. Affidavit of Roberts, George #100740 (B/M)
17. Affidavit of Truitt, Harvey #106805 (W/M)
18. Affidavit of Winslow, James #358488 (W/M)
19. Affidavit of Jackson, Randolph #100711 (B/M)
20. Affidavit of Miller, Scott #105945 (W/M)
21. Affidavit of Davis, Donald #911891 (W/M)
22. Affidavit of Forrester, Donald #B012237 (W/M)
23. Affidavit of Chapman, Mark #085841 (W/M)
24. Affidavit of Goldsmith, Damion #A099748 (B/M)
25. Emergency Log

WITNESSES: 1. Major Danny Wilkins
2. All officers and inmates submitting statements as listed in the exhibits.

CONCLUSIONS: This incident was a retaliation by young assaultive Black inmates against random White inmates due to the earlier incident between inmates Robb and Hayward.

The transfer of all of the suspects in this case including Robb and Hayward proved to be sufficient in quelling any further incidents.

It is recommended that a close review should be done on all of the suspects involved in this incident as many of them have been involved in similar incidents at other institutions. It is felt that these inmates should be under close management status.

/s/ Robert B. Powers
Correctional Officer Investigator I

cc:
Mr. Jerry W. Hicks, Superintendent
Inspector L. Ball, Union Correctional Institution
Inmate Records

EXHIBIT #1

LIST OF VICTIMS

1. Davis, Donald #911891 (W/M) - Struck in jaw. Sustained a broken tooth.

2. Winslow, James #358488 (W/M) - Superficial cut on face; sore jaw.

3. Miller, Scott #105945 (W/M) - Right eye and lip slightly swollen.

4. Coffey, Joseph #094749 (W/M) - Left elbow sore.

5. Garlinghouse, Edward #105565 (W/M) - States he defended himself and he did not receive any injuries.

6. Truitt, Harvey #106805 (W/M) - States he defended himself and he did not receive any injuries.

7. Jones, Donald #105340 (W/M) - States he defended himself and he did not receive any injuries.

8. Hornsby, Malcolm #903891 (W/M) - Sustained serious injuries to his head, right eye and jaw. Was transported via ambulance to an outside hospital for treatment of these injuries.

EXHIBIT #2

LIST OF SUSPECTS

1. Williams, Charles Edward #096626 - Nineteen (19) year old Black male serving a three year sentence for burglary; grand theft; burglary of a conveyance and inciting a riot in a state institution. From Palm Beach and Jackson Counties (DOB 12-3-67). Williams was transferred to Florida State Prison on 7-10-87.

2. Banks, Tony Leon #102690 - Twenty-one year old Black male serving a twelve (12) year sentence for second degree murder and unlawful possession of a firearm while engaged in a criminal offense. From Dade County (DOB 1-22-66). Banks was transferred to Florida State Prison on 7-10-87.

3. Reid, Derek #101856 - Nineteen (19) year old Black male serving a twenty-two (22) year sentence for second degree murder and attempted robbery. From Broward County (DOB 10-7-67). Reid was transferred to Florida State Prison on 7-10-87.

4. Bryan, Clifford #406646 - Twenty (20) year old Black male serving two commitments of fifteen (15) years and one five year concurrent sentence for burglary of a dwelling; grand theft and sexual battery. From Dade County (DOB 1-27-67). Bryan was transferred to Martin Correctional Institution on 7-10-87.

5. Rayside, Ralph #099670 - Nineteen (19) year old Black male serving a four year sentence for robbery and aggravated battery. From Palm Beach County (DOB 11-27-67). Rayside was transferred to Union Correctional Institution on 7-10-87.

6/ Linen, Harvey Lee #A493480 - Twenty (20) year old Black male serving a nine (9) year sentence for armed robbery; grand theft and battery on a Correctional Officer. From Hillsborough County (DOB 11-6-68). Linen was transferred to Martin Correctional Institution on 7-10-87.

7. Reed, Michael #101294 - Twenty year old Black male serving a nine (9) year sentence for armed robbery and possession of a firearm while engaged in a felony. From Broward County (DOB 2-25-67). Reed was transferred to Union Correctional Institution on 7-10-87.

8. Waller, Hassan #104154 - Eighteen (18) year old Black male serving a three year sentence for grand theft; burglary and inciting a riot in a state institution. From Palm Beach and Jackson Counties (DOB 1-20-69). Waller was transferred to Martin Correctional Institution on 7-10-87.

9. Foster, Ivory Leroy #097105 - Sixteen (16) year old Black male serving a seven (7) year sentence for aggravated battery. From Jackson County (DOB 7-4-71). Foster was transferred to Union Correctional Institution on 7-10-87.

10. Shiloh, Adrian #0981809 - Twenty (20) year old Black male serving a 3-1/2 year sentence for aggravated battery. From Duval County (DOB 6-6-67). Shiloh was transferred to Union Correctional Institution on 7-10-87.

11. Monroe, Reginald Anthony #100195 - Eighteen (18() year old Black male serving a three year sentence for aggravated assault and aggravated battery. From Jackson and Gadsden Counties (DOB 10-8-69). Monroe was transferred to Union Correctional Institution on 7-10-87.

12. Winegard, Louis Alexander III #099352 - Twenty two (22) year old Black male serving a six year sentence for armed robbery. From Duval County (DOB 8-18-64). Winegard was transferred to Martin Correctional Institution on 7-10-87.

13. Owens, Virgil Leander #096333 - Nineteen (19) year old Black male serving a four and one-half year sentence for robbery with a deadly weapon. From Brevard County (DOB 10-9-67). Owens was transferred to Martin Correctional Institution on 7-10-87.

14. Odom, Tony #491796 - Twenty (20) year old Black male serving a seven year sentence for burglary; grand theft; burglary of a dwelling and uttering a forged instrument. From Hillsborough County (DOB 3-5-67). Odom was transferred to Union Correctional Institution on 7-10-87.

15. Newton, Terry Sean #096516 - Twenty (20) year old Black male serving a four year sentence for attempted robbery with a firearm and robbery with a firearm. From Dade County (DOB 12-5-66). Newton was transferred to Union Correctional Institution on 7-10-87.